



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 30002128

Date: MAR. 19, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a volleyball coach, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of his field of endeavor. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339, 1343 (W.D. Wash. 2011).

## II. ANALYSIS

The record reflects that the Petitioner was a professional volleyball player in Brazil for nearly two decades until his retirement as an athlete in 2018. At the time of filing in March 2023, he was employed as the head soccer coach for a youth volleyball academy in Illinois.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed that he could meet up to six of the ten criteria.

The Director determined that the Petitioner had met four of the evidentiary criteria and therefore satisfied the initial evidence requirements for this classification. Specifically, the Director determined that the Petitioner submitted evidence establishing the following criteria: his receipt of lesser nationally and internationally recognized prizes for his athletic performance, his membership in associations requiring outstanding achievement of their members, published material about him and relating to his work as an athlete, and evidence that he had performed in a leading or critical role for an organization with a distinguished reputation. *See* 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii) and (viii). We will not disturb the Director’s determination that the Petitioner satisfied the initial evidence requirements by meeting at least three criteria at 8 C.F.R. § 204.5(h)(3).

The Director further determined that the Petitioner claimed, but did not establish, that he could meet two additional criteria, including his participation as a judge of the work of others in his field at 8 C.F.R. § 204.5(h)(3)(iv) and his command of a high salary in relation to others in the field 8 C.F.R. § 204.5(h)(3)(ix). Nevertheless, because the Director determined that the Petitioner met at least three of the regulatory criteria, he proceeded to a final merits determination.

## B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

The Director determined that the Petitioner had attained significant successes and achievements as a volleyball player resulting in national acclaim in the past as an athlete. The Director concluded, however, that the Petitioner did not demonstrate that he had sustained national or international acclaim and that he is among the small percentage of athletes or coaches at the very top of the field. We note that the Director misstated that the Petitioner intends to continue his career in the United States as an athlete and coach; we recognize that the Petitioner intends to work as a coach to youth athletes at a volleyball academy that he founded as a partnership. Upon review, and for the reasons discussed below, we conclude that the Petitioner did not establish eligibility for this highly restrictive classification.

As a preliminary matter, we note that, on appeal, the Petitioner includes business foundational documents and documentation concerning sponsorships for his volleyball academy. These documents may be informative to demonstrate his future plans to work as a volleyball coach, his claimed area of expertise. *See* section 203(b)(1)(A)(ii); 8 CFR 204.5(h)(5). However, these documents post-date the filing date of the petition, and thus cannot be considered evidence of his asserted extraordinary ability at the time of filing the petition in March 2023. A petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner asserts that the Director mischaracterized evidence, citing several letters previously included in the record and explaining why the contents of those letters demonstrate his extraordinary ability in the field of professional volleyball. The Petitioner also contends that the Director ignored certain evidence, such as the offer of a coaching position from the [REDACTED] [REDACTED]. The Petitioner's appeal brief is supplemented, in part, by new letters from the authors of some of the previously submitted letters providing additional details about the Petitioner's career.

The record shows that the Petitioner's career as a professional volleyball player includes high placements and wins at dozens of national and international tournaments. The Petitioner won a bronze medal at the 2003 [REDACTED] Brazil, and placed ninth in the 2004 [REDACTED] Greece. Letters of support from professional players, coaches, and organizations of distinguished reputation—including the International Volleyball Federation (or FIVB)—all laude the Petitioner's abilities as a player and describe his renown in the volleyball community, and the evidence of record demonstrates the significance of a lengthy and

highly-ranked volleyball career in Brazil. As noted by the Director, the evidence of record suggests that the Petitioner has not played volleyball as a professional competitor since 2018, nearly five years prior to the filing of the petition in March 2023. The issue at hand is not whether the Petitioner qualifies as an individual of extraordinary ability based on previous acclaim as an athlete; the issue is whether the Petitioner, a former athlete, has achieved sustained national or international acclaim in his intended career as a coach.

Among the letters of support are letters from the former volleyball player with whom he competed in the Olympics; one letter details techniques that the Petitioner suggested and used during several competitions from 1999 to 2011 and the resulting placements of the team. This former teammate emphasizes that, in 1999 and 2000, the Petitioner served as both a player and coach for the team. He states that on more than one occasion, when they did have a coach, the Petitioner overruled strategies that the coach had implemented based on his understanding of the conditions of the game. He also states the following:

With his drive and attitude of a coach, which has always been a feature in him, [the Petitioner] has helped not only me, but also other relevant names of the sport to develop themselves and achieve victory and stardom.

Letters from other individuals similarly credit the Petitioner for helping them improve their volleyball skills and advance their careers. One individual who began playing professionally with the Petitioner in 2012 states that in 2013, as a direct result of the Petitioner's teachings, he was "elected the Most Improved Player, Rookie of the Year and MVP of the FIVB World Tour." He lists titles and medals he received at national and international competitions from 2013 to 2018, as well as his fifth-place finish in the 2020 Olympic Games. This individual does not disclose whether the Petitioner trained with him during this span of time, and the record does not show that the Petitioner played professionally with him during this time. Another individual who participated in the Olympics in 2016 and 2021 credits his award of the FIVB Beach Volleyball World Tour's Most Improved Player in 2010 to his training with the Petitioner beginning in 2009, stating that they played together for three years. A letter from a contemporary player affirms that author's previous partnership and receipt of the award. The letter also states the following:

The professional beach volleyball community, especially in Brazil, is in disbelief that the immigration authorities in the US did not recognize [the Petitioner] as one of the very few players in the world who not only remained at the top as a player himself for over a decade, but also shaped and coached younger athletes who would later represent Brazil (and win medals) in Olympic games . . . .

The author of this letter, however, does not identify specifically how the Petitioner's work affected these athletes' performance beyond their early years in the sport. A letter from a former teammate credits the Petitioner with training him early in his career, describing the Petitioner as "the brain of the team" who instructed him on the specifics of his gameplay in 2008 and 2009; the author, however, does not state whether he trained with the Petitioner prior in the intervening years from 2014 to 2017, a period during which he states he won several tournaments. The author adds that the Petitioner "not only coached me to transition from a sparring partner to a professional player myself, but also did the same for several young players . . . ." While these letters serve to demonstrate that the Petitioner

influenced fellow athletes at the beginnings of their careers, they do not sufficiently demonstrate that the Petitioner is directly responsible for their successes following years of training. The record does not include documentation demonstrating, for example, that the Petitioner continued to train these athletes in subsequent years leading to their winning national or international awards during those years—outcomes that could demonstrate the Petitioner’s national or international acclaim as their coach. Although the evidence of record supports a determination that the Petitioner was a talented player who shared his knowledge and skill with fellow athletes early in their careers, there is insufficient objective evidence to establish whether or how these players’ achievements contributed to the Petitioner’s own acclaim and recognition in the field as a coach.

Further, while the record includes letters from individuals who “consulted” with the Petitioner in recent years concerning their professional sports careers, the record does not demonstrate how such consultation is evidence of the Petitioner’s sustained national or international acclaim as a coach; while these individuals may have been familiar with the Petitioner’s successes as an athlete, their knowledge of his career does not serve as probative evidence of a career as an acclaimed coach.

Similarly, evidence of several job offers in recent years to coach volleyball—including from the [redacted] and the [redacted]—does not sufficiently demonstrate that the Petitioner achieved or sustained acclaim as a coach. Although these employment offers may demonstrate the organizations’ confidence in the Petitioner’s coaching ability based on his previous success as an athlete, the offers themselves do not convey recent national or international acclaim as a coach.

Finally, we recognize that the Petitioner relies, in part, on the fact that he has opened a volleyball academy as evidence of his sustained acclaim as a coach. A letter from the co-founder of the academy explains that it was the Petitioner’s reputation as an athlete that gave him the confidence to enter into a business partnership in which the Petitioner would work as the head coach at the academy. The co-founder’s knowledge of the Petitioner’s previous athletic success does not support the Petitioner’s claim of sustained acclaim as a coach. And while the Petitioner’s previous successes as an athlete—including as a former Olympic participant—may potentially positively impact the operation of the academy and aspiring athletes in the region who utilize its services—it is not clear how his work at an academy for youth developing volleyball skills demonstrates national or international acclaim. The Petitioner asserts that news coverage in Brazil of his academy’s opening is evidence of his acclaim; however, this media coverage discusses the Petitioner in terms of his previous success as an athlete “in the early 2000s,” rather than as a coach.

On review, the balance of the record demonstrates that the Petitioner was an acclaimed professional volleyball player in Brazil who enjoyed success and acclaim early in his career and who played competitively for many years longer than other athletes in his field. However, the record does not establish that he received or sustained national or international acclaim as a volleyball coach. He did not demonstrate through “extensive documentation” that his work coaching and advising individual athletes or other sports professionals has brought him the requisite sustained acclaim at a national or international level, such that we could conclude that he has a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. As such, the record does not indicate he currently has a degree of recognition for his achievements consistent with the sustained acclaim that the statute demands. Moreover, the

record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.